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FINAL

## **EACB response to the European Commission's online public consultation on the Distance Marketing of Consumer Financial Services Directive (DMFSD)**

### **September 2021**

The **European Association of Co-operative Banks** ([EACB](http://www.eacb.coop)) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4,050 locally operating banks and 58,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 214 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 85 million members and 749,000 employees and have a total average market share of about 20%.

For further details, please visit [www.eacb.coop](http://www.eacb.coop)

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**The voice of 2.700 local and retail banks, 85 million members, 214 million customers in EU**

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## Introduction

[Directive 2002/65/EC](#) on Distance Marketing of Consumer Financial Services ('Directive') lays down rules on three key areas (pre-contractual information; right of withdrawal; ban of unsolicited services) concerning the distance marketing of consumer financial services. Any service of a banking, credit, mortgage, insurance, personal pension, investment or payment nature falls under the scope of Directive whenever the financial service is purchased at a distance.

The Directive aims at promoting the free movement of financial services in the single market by harmonising consumer protection rules governing this area. The Directive sets out a list of information items concerning the financial service that the consumer should receive before the distance contract is concluded.

The Directive applies horizontally across all EU legislation in the field of financial services, as long as the product-specific legislation (e.g., Consumer Credit Directive or Mortgage Credit Directive) or horizontal legislation (e.g., the General Data Protection Regulation) does not provide specific and more detailed rules. In this regard, the Directive is considered to contain a 'safety net', in the sense that in the absence of present or future rules regulating the issues covered by the Directive, the latter will apply. Whereas the Directive had clear value added when it entered into force, many of its substantial elements have been taken over by sectoral legislation that has been adopted afterwards, e.g., in the context and aftermath of the financial crisis.

The Commission is presently carrying out an impact assessment to see whether and if so, how, to revise the Directive and launched a consultation in this context.

The EACB (the European Association of Co-operative Banks) has carefully reviewed the public consultation questionnaire published by the European Commission with its Members on the DMFSD. The EACB focused on and provided an answer to part II that focuses on technical aspects of the directive.

## EACB feedback to part II of the public consultation

1. Considering the overlap with sector specific legislation, based on your experience, how often are the articles on pre-contractual information stemming from the Directive applied or enforced with regard to the following financial services?

	On a daily basis	Often	Rarely	Never
Consumer credits (including credit cards)	X			
Mortgages	X			
Insurance products (e.g. car, home insurance etc.)				



Payment accounts	X			
Investment products (e.g. shares, bonds or funds)	X			
Payment services (such as money transfer services)	X			
Personal pension products				

Please explain how the articles on pre-contractual information stemming from the Directive are still applied or enforced, providing the situation when it was applied or enforced:

*How often the articles of the DMFSD are applied differs across the EACB members.*

*Even if the articles are applied more often in some MS than others, the EACB believes the provisions of the DMFSD on pre-contractual information are still relevant for savings accounts, consumer loans not covered by the consumer credit directive in its current form or for new products and mortgage credit. Also, the DMFSD provisions for telephone sales remain fully relevant given the absence of specific European legal provisions applicable to payment services, payment accounts, investment products and consumer credit. For those services covered by product-specific legislation, the DMFSD provides complimentary protection.*

2. Considering the overlap with sector specific legislation, based on your experience, how often are the articles on the right of withdrawal stemming from the Directive applied or enforced with regard to the following financial services?

	On a daily basis	Often	Rarely	Never
Consumer credits (including credit cards)	X			
Mortgages				X
Insurance products (e.g. car, home insurance etc.)				
Payment accounts	X			
Payment services (such as money transfer services)	X			
Personal pension products				

Please explain how the right of withdrawal stemming from the Directive is still applied or enforced, providing the situation when it was applied or enforced:



*How often the articles of the DMFSD are applied differs across the EACB members. In general, the right of withdrawal introduced by the directive is still applied or enforced as it is an important consumer protection measure. The information on the right of withdrawal is provided in the contract and it is exercised by consumers through a withdrawal form or a freely chosen durable medium. If the consumer does not exercise the right of withdrawal within the time limit, it will commit the borrower into the credit agreement if the lender informs of the approval.*

*Some national law does not allow a right of withdrawal for mortgage credit as a reflection period is provided.*

3. Considering the overlap with sector specific legislation, based on your experience, how often is the article on unsolicited services of the Directive applied or enforced with regard to the following financial services?

	On a daily basis	Often	Rarely	Never
Consumer credits (including credit cards)	X			
Mortgages	X			
Insurance products (e.g. car, home insurance etc.)				
Payment accounts	X			
Investment products (e.g. shares, bonds or funds)	X			
Payment services (such as money transfer services)	X			
Personal pension products				

Please explain how the article on unsolicited services stemming from the Directive is still applied or enforced, providing the situation when it was applied or enforced:

*How often the articles of the DMFSD are applied differs across the EACB members.*

*Nevertheless, it seems that, for a fair number of product-specific legislation, provisions regarding unsolicited services do not exist. Hence article 9 on unsolicited services stemming from DMFSD is applied. For the record, some Members also report that they apply, over and beyond the DMFSD, their national transposition of the Unfair Commercial Practices Directive.*



*On a general note, the wording of the question is somewhat ambiguous. The EACB would like to stress that in any case, the EACB Member banks note that they do not provide products to their customers without their consent as per the national legislation transposing the DMFSD.*

4. Considering the overlap with sector specific legislation, based on your experience, how often is the article on unsolicited communication of the Directive applied or enforced with regard to the following financial services?

	On a daily basis	Often	Rarely	Never
Consumer credits (including credit cards)	X			
Mortgages	X			
Insurance products (e.g. car, home insurance etc.)				
Payment accounts	X			
Investment products (e.g. shares, bonds or funds)	X			
Payment services (such as money transfer services)	X			
Personal pension products				

Please explain how the article on unsolicited communication established by the Directive is still applied or enforced, providing the situation when it was applied or enforced:

*How often the articles of the DMFSD are applied differs across the EACB members.*

*Nevertheless, Article 10 of the DMFSD on unsolicited communications is still relevant as a complementary framework to other regulations in force at European level (GDPR, e-Commerce Directive, Unfair Commercial Practice Directive etc.) and as a safety net with regard to those products and situations not covered by the other acts.*

5a. How useful is the 'safety net' feature of the Directive (i.e. the application of the Directive in those instances when new products appear on the market and are not yet subject to specific regulation and when the product specific legislation does not cover, or does not cover sufficiently, the rules established by the Directive) for the following financial services?

	Very useful	Useful	Not useful	Irrelevant
Consumer credits (including credit cards)	X			



Mortgages	X			
Insurance products (e.g. car, home insurance etc.)				
Payment accounts	X			
Investment products (e.g. shares, bonds or funds)	X			
Payment services (such as money transfer services)	X			
Personal pension products				

Please explain

*The Members noted that when product-specific directives exist (e.g., CCD), those directives are applied. However, in these cases, banks combine the sector specific legislation requirements and the DMFSD requirements. If the product is outside the scope of a product-specific or other existing directive (with regard to e.g., pre-contractual and contractual information and the right of withdrawal), the DMFSD is applied.*

*The DMFSD functions as a safety net as it sets out general principles, consistent with other acts, governing distance selling in a simple, flexible and technologically neutral way. It provides a common ground for consumer protection when the sale of a service is not specifically regulated. This framework leaves room for innovation and is still valid. There is therefore no need to revise the directive.*

5b. Can you provide concrete examples when you applied the rules of the Directive since they went beyond the rules covered by specific financial services legislation (e.g. the right of withdrawal for payment accounts contracted at a distance)?

*The DMFSD is still relevant and applied, for example with regard to the right of withdrawal for the opening of a payment account remotely or for the subscription of payment services at a distance. Pre-contractual information of specific products is supplemented in a complimentary manner per the DMFSD, even if not mandatory.*

5c. Can you provide concrete examples when you applied the rules of the Directive for products which are exempt from the product specific legislation (e.g. payday loans, which are a type of credit agreement, contracted at a distance and are below EUR 200)?

*Certain members noted that they apply the DMFSD for split payments, credits lasting less than 3 months or less than €200.*



5d. Can you provide concrete examples when you applied the rules of the Directive for new products that appeared on the market before product-specific legislation was enacted (e.g. virtual currencies bought at a distance)?

6. Has the application and enforcement of the articles of the Directive progressively diminished due to the entry into application of subsequent product or horizontal legislation?

Yes

No

**Don't know - EACB**

Please explain

*It is difficult for the EACB to measure whether application or enforcement has diminished, hence the 'Don't know answer'.*

*Having said that, many product-specific directives have been adopted since 2002, but the DMFSD remains useful especially with regard to new products that are exempt from product-specific legislation, while remaining consistent with the other acts.*

*The cooperative banks note that they apply the DMFSD parallel to other acts. The technology neutrality and simplicity of the DMFSD allows it to adapt to technical developments and consumer habits.*

**7. Would the repeal of the Directive lead to:**

	Yes	No	Don't know
Regulatory gaps leading to an unlevel playing field (e.g. undue competitive advantage for financial providers in Member States that would provide a less protective framework)	X		
Lower consumer protection in those areas which are not as yet covered by product specific or horizontal legislation (e.g. pre-contractual information for consumer loans below EUR 200)	X		
Increased difficulties for cross-border trade			X
A reduction of administrative burdens for Member States (e.g. reduction of costs for supervision of the obligations stemming from the Directive)			X
A reduction of regulatory costs for financial service providers (e.g. less compliance costs related to pre-contractual information obligations stemming from the Directive)	X		



None of the above since in practice the Directive scope of application has lost most of its relevance		X	
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Please explain

*The DMFSD guarantees a high level of protection for consumers in all Member States, and it is also well known by consumers as a simple and long-standing horizontal framework.*

*Repeal of the directive could increase the differences between Member States and create an unlevel playing field (e.g., undue competitive advantage for financial services providers in Member States providing less protective framework).*

*As it stands, the directive already meets the 'better regulation' objectives set by the Union. A change in its content would necessarily lead to more complexity and an increase in the implementation load, in contradiction with the stated objectives*

*Thus, in general the directive remains relevant, and we see no need to revise the directive.*

**8.** The Directive bans unsolicited services and communications from suppliers when such services or communications lack the consumer's consent. However, over time, through the introduction of product specific and horizontal specific legislation, in particular Directive 2002/58/EC (e-Privacy), Directive 2005/29/EC (unfair business-to-consumer practices) and Regulation (EU) 2016/679 (General Data Protection Regulation), the bans established by the Directive have lost their relevance. Should the revision of the Directive lead to the repeal of the current articles (Articles 9 & 10) concerning unsolicited supplies and unsolicited communications?

Yes

**No - EACB**

Don't know

Please explain

*The provisions of the DMFSD are complementary to other existing acts. In general, the requirements of the DMFSD have not lost their relevance.*





**Contact:**

The EACB trusts that its comments will be taken into account.

For further information or questions on this paper, please contact:

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